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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION
13

14 KAREN D. VARNADO,
15 Plaintiff,

16 vs.

17 MIDLAND FUNDING, LLC., a
Delaware Limited Liability
18 Corporation Authorized to do
Business in California; MIDLAND
CREDIT MANAGEMENT, INC., a
19 Kansas Corporation MR. SAMUEL
SHEPPY, individually and in his
20 official capacity; and DOES 1 -21,

21 Defendants.
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CASE NO.: 4:13-cv-05705-DMR

~~PROPOSED~~ PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
12 this action but are retained to represent or advise a party to this action and have
13 appeared in this action on behalf of that party or are affiliated with a law firm which
14 has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
23 their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
27 from a Producing Party.
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1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected
3 Material (as defined above), but also (1) any information copied or extracted from
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
5 Material; and (3) any testimony, conversations, or presentations by Parties or their
6 Counsel that might reveal Protected Material. However, the protections conferred by
7 this Stipulation and Order do not cover the following information: (a) any information
8 that is in the public domain at the time of disclosure to a Receiving Party or becomes
9 part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the
11 public record through trial or otherwise; and (b) any information known to the
12 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
13 disclosure from a source who obtained the information lawfully and under no
14 obligation of confidentiality to the Designating Party. Any use of Protected Material at
15 trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations
18 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
19 in writing or a court order otherwise directs. Final disposition shall be deemed to be
20 the later of (1) dismissal of all claims and defenses in this action, with or without
21 prejudice; and (2) final judgment herein after the completion and exhaustion of all
22 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
23 for filing any motions or applications for extension of time pursuant to applicable law.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or Non-Party that designates information or items for protection under this
27 Order must take care to limit any such designation to specific material that qualifies
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1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify – so that other portions of the material, documents, items, or communications
4 for which protection is not warranted are not swept unjustifiably within the ambit of
5 this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations
7 that are shown to be clearly unjustified or that have been made for an improper purpose
8 (e.g., to unnecessarily encumber or retard the case development process or to impose
9 unnecessary expenses and burdens on other parties) expose the Designating Party to
10 sanctions.

11 If it comes to a Designating Party's attention that information or items that it
12 designated for protection do not qualify for protection, that Designating Party must
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this
15 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
16 or ordered, Disclosure or Discovery Material that qualifies for protection under this
17 Order must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic
20 documents, but excluding transcripts of depositions or other pretrial or trial
21 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
22 page that contains protected material. If only a portion or portions of the material on a
23 page qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents or materials available for
26 inspection need not designate them for protection until after the inspecting Party has
27 indicated which material it would like copied and produced. During the inspection and
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1 before the designation, all of the material made available for inspection shall be
 2 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it
 3 wants copied and produced, the Producing Party must determine which documents, or
 4 portions thereof, qualify for protection under this Order. Then, before producing the
 5 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to
 6 each page that contains Protected Material. If only a portion or portions of the material
 7 on a page qualifies for protection, the Producing Party also must clearly identify the
 8 protected portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in deposition or in other pretrial or trial proceedings,
 10 that the Designating Party identify on the record, before the close of the deposition,
 11 hearing, or other proceeding, all protected testimony.

12 (c) for information produced in some form other than documentary and for
 13 any other tangible items, that the Producing Party affix in a prominent place on the
 14 exterior of the container or containers in which the information or item is stored the
 15 legend "CONFIDENTIAL." If only a portion or portions of the information or item
 16 warrant protection, the Producing Party, to the extent practicable, shall identify the
 17 protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 19 failure to designate qualified information or items does not, standing alone, waive the
 20 Designating Party's right to secure protection under this Order for such material. Upon
 21 timely correction of a designation, the Receiving Party must make reasonable efforts to
 22 assure that the material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 25 designation of confidentiality at any time. Unless a prompt challenge to a Designating
 26 Party's confidentiality designation is necessary to avoid foreseeable, substantial
 27 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
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1 litigation, a Party does not waive its right to challenge a confidentiality designation by
2 electing not to mount a challenge promptly after the original designation is disclosed.

3 6.2 Meet and Confer. The parties shall not file formal discovery motions.
4 Instead, as required by the federal and local rules, the parties shall first meet and confer
5 to try to resolve their disagreements. The meet and confer session must be ***in person or***
6 ***by telephone***, and may not be conducted by letter, e-mail, or fax. In conferring, the
7 Challenging Party may explain the basis for its belief that the confidentiality
8 designation was not proper and may give the Designating Party an opportunity to
9 review the designated material, to reconsider the circumstances, and, if no change in
10 designation is offered, to explain the basis for the chosen designation. If disagreements
11 remain, the parties shall file a joint letter no later than five business days after the meet
12 and confer session, unless otherwise directed by the court. **Lead trial counsel for both**
13 **parties must sign the letter**, which shall include an attestation that the parties met and
14 conferred in person or by telephone regarding all issues prior to filing the letter. Going
15 issue-by-issue, the joint letter shall describe each unresolved issue, summarize each
16 party's position with appropriate legal authority; and provide each party's final
17 proposed compromise before moving to the next issue. The joint letter shall not exceed
18 ten pages without leave of court. **Parties are expected to plan for and cooperate in**
19 **preparing the joint letter so that each side has adequate time to address the**
20 **arguments.**

21 6.3 Judicial Intervention. In the rare instance that a joint letter
22 is not possible, each side may submit a letter not to exceed four pages, which shall
23 include an explanation of why a joint letter was not possible. The parties shall submit
24 one exhibit to the letter that only sets forth each designation that is being challenged,
25 followed immediately by the objections and/or responses thereto. No other information
26 shall be included in any such exhibit. No other exhibits shall be submitted without
27 prior approval by the court. The court will review the submission(s) and determine
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whether formal briefing or proceedings are necessary. **Discovery letter briefs must be e-filed under the Civil Events category of Motions and Related Filings > Motions - General > "Discovery Letter Brief."**

In the event that a challenge proceeding is ordered, the court has found that it is often efficient and beneficial for counsel to appear *in person*. This provides the opportunity, where appropriate, to engage counsel in resolving aspects of the confidentiality designation challenge while remaining available to rule on any disputes that counsel are not able to resolve. For this reason, the court expects counsel to appear in person. Permission for a party to attend by telephone may be granted, in the court's discretion, upon written request made at least one week in advance of the proceeding if the court determines that good cause exists to excuse personal attendance, and that personal attendance is not needed in order to have an effective challenge proceeding. The facts establishing good cause must be set forth in the request.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. All parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

6.4 Emergencies During Discovery Events. In emergencies during discovery events (such as depositions), any party may, after exhausting good faith attempts to resolve disputed issues, seek judicial intervention pursuant to Civil L.R. 37-1(b) by contacting the court through the courtroom deputy. If the court is unavailable, the discovery event shall proceed with objections noted for the record.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is

1 disclosed or produced by another Party or by a Non-Party in connection with this case
2 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
3 Material may be disclosed only to the categories of persons and under the conditions
4 described in this Order. When the litigation has been terminated, a Receiving Party
5 must comply with the provisions of section 13 below (FINAL DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a
7 location and in a secure manner that ensures that access is limited to the persons
8 authorized under this Order.

9 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the Designating Party, a Receiving
11 Party may disclose any information or item designated “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
13 employees of said Outside Counsel of Record to whom it is reasonably necessary to
14 disclose the information for this litigation and who have signed the “Acknowledgment
15 and Agreement to Be Bound” that is attached hereto as Exhibit A;

16 (b) the officers, directors, and employees (including House Counsel) of the
17 Receiving Party to whom disclosure is reasonably necessary for this litigation and who
18 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the court and its personnel;

23 (e) court reporters and their staff, professional jury or trial consultants, mock
24 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
25 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
26 (Exhibit A);

27 (f) during their depositions, witnesses in the action to whom disclosure is
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1 reasonably necessary and who have signed the “Acknowledgment and Agreement to
2 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
3 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
4 reveal Protected Material must be separately bound by the court reporter and may not
5 be disclosed to anyone except as permitted under this Stipulated Protective Order.

6 (g) the author or recipient of a document containing the information or a
7 custodian or other person who otherwise possessed or knew the information.

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
9 OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation that
11 compels disclosure of any information or items designated in this action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or
17 order is subject to this Protective Order. Such notification shall include a copy of this
18 Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” before a determination by the court from which the subpoena or
24 order issued, unless the Party has obtained the Designating Party’s permission. The
25 Designating Party shall bear the burden and expense of seeking protection in that court
26 of its confidential material – and nothing in these provisions should be construed as
27 authorizing or encouraging a Receiving Party in this action to disobey a lawful
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1 directive from another court.

2 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
3 IN THIS LITIGATION

4 (a) The terms of this Order are applicable to information produced by a Non-
5 Party in this action and designated as "CONFIDENTIAL." Such information produced
6 by Non-Parties in connection with this litigation is protected by the remedies and relief
7 provided by this Order. Nothing in these provisions should be construed as prohibiting
8 a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party's confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party's
12 confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the Non-Party
14 that some or all of the information requested is subject to a confidentiality agreement
15 with a Non-Party;

16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
18 specific description of the information requested; and

19 (3) make the information requested available for inspection by the Non-
20 Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court
22 within 14 days of receiving the notice and accompanying information, the Receiving
23 Party may produce the Non-Party's confidential information responsive to the
24 discovery request. If the Non-Party timely seeks a protective order, the Receiving Party
25 shall not produce any information in its possession or control that is subject to the
26 confidentiality agreement with the Non-Party before a determination by the court.
27 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
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1 of seeking protection in this court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 4 Protected Material to any person or in any circumstance not authorized under this
 5 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
 6 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
 7 all unauthorized copies of the Protected Material, (c) inform the person or persons to
 8 whom unauthorized disclosures were made of all the terms of this Order, and (d)
 9 request such person or persons to execute the “Acknowledgment and Agreement to Be
 10 Bound” that is attached hereto as Exhibit A.

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 12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 13 PROTECTED MATERIAL

14 When a Producing Party gives notice to Receiving Parties that certain
 15 inadvertently produced material is subject to a claim of privilege or other protection,
 16 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 17 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
 18 may be established in an e-discovery order that provides for production without prior
 19 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
 20 parties reach an agreement on the effect of disclosure of a communication or
 21 information covered by the attorney-client privilege or work product protection, the
 22 parties may incorporate their agreement in the stipulated protective order submitted to
 23 the court.

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 26 person to seek its modification by the court in the future.
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1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. Without written permission from the
7 Designating Party or a court order secured after appropriate notice to all interested
8 persons, a Party may not file in the public record in this action any Protected Material.
9 A Party that seeks to file under seal any Protected Material must comply with Civil
10 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
11 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
12 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
13 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
14 entitled to protection under the law. If a Receiving Party's request to file Protected
15 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
16 the Receiving Party may file the information in the public record pursuant to Civil
17 Local Rule 79-5(e) unless otherwise instructed by the court.

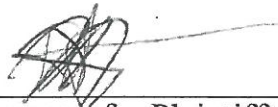
18 13. FINAL DISPOSITION

19 Within 60 days after the final disposition of this action, as defined in paragraph
20 4, each Receiving Party must return all Protected Material to the Producing Party or
21 destroy such material. As used in this subdivision, "all Protected Material" includes all
22 copies, abstracts, compilations, summaries, and any other format reproducing or
23 capturing any of the Protected Material. Whether the Protected Material is returned or
24 destroyed, the Receiving Party must submit a written certification to the Producing
25 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
26 deadline that (1) identifies (by category, where appropriate) all the Protected Material
27 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
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1 any copies, abstracts, compilations, summaries or any other format reproducing or
2 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
3 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
4 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
5 expert reports, attorney work product, and consultant and expert work product, even if
6 such materials contain Protected Material. Any such archival copies that contain or
7 constitute Protected Material remain subject to this Protective Order as set forth in
8 Section 4 (DURATION).

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 DATED: 4/23/14


Attorneys for Plaintiff

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14 DATED: 4/23/14


Attorneys for Defendant

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17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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19 DATED: April 30, 2014



United States District/Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I
 have read in its entirety and understand the Stipulated Protective Order that was issued
 by the United States District Court for the Northern District of California on [date] in
 the case of *Varnado v. Midland Funding, LLC, et. al.*, (Case No.: 4:13-CV-05705-
 DMR). I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could
 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
 that I will not disclose in any manner any information or item that is subject to this
 Stipulated Protective Order to any person or entity except in strict compliance with the
 provisions of this Order. I further agree to submit to the jurisdiction of the United
 States District Court for the Northern District of California for the purpose of
 enforcing the terms of this Stipulated Protective Order, even if such enforcement
 proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address
 and telephone number] as my California agent for service of process in connection
 with this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____